



EDMONTON  
**TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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## **SDAB-D-19-104**

### **Application No. 279658672-022**

An appeal to construct exterior alterations to a Semi-Detached House (increased in building height) was **WITHDRAWN**.



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Date: July 11, 2019  
Project Number: 311485274-001  
File Number: SDAB-D-19-105

**Notice of Decision**

- [1] On July 4, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **June 7, 2019**. The appeal concerned the decision of the Development Authority, issued on May 24, 2019, to approve the following development:

**Operate a Major Home Based Business (Office and Food Preparation Area for a Food Preparation Business - SABZ) expires May 24, 2024.**

- [2] The subject property is on Plan 1210NY Blk 23 Lot 20, located at 11712 - 42 Avenue NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the approved Development Permit;
  - The Development Officer’s written submissions;
  - The Appellant’s written submission;
  - The Respondent’s written submissions;
  - One email from an adjacent property owner in opposition to the proposed development; and
  - An email from an adjacent property owner rescinding their initial opposition to the proposed development.

**Preliminary Matters**

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

*i) Position of the Appellant, Mr. S. Rokosh*

[7] Mr. Rokosh is the (east) abutting neighbour to the subject site.

[8] He is concerned with the limited information that was available for the proposed development prior to filing an appeal.

[9] He has four concerns with the Major Home Based Business:

- a. The City's procedure to approving the proposed development.
- b. The validity of the proposed development permit.
- c. The impact that the proposed business will have on the community.
- d. A decrease in property values for residents in the neighbourhood.

[10] The neighbours did not have any knowledge of the proposed development until they received a letter from the City regarding the approved development permit.

[11] There is a dayhome that is operating from the subject site.

[12] It is his opinion that a business should not operate from the subject dwelling as the site is zoned RF1 Single Detached Residential.

[13] He received information from the Respondent regarding the operation of the business and feels the proposed development is a retail business that does not comply with the definition of a Major Home Based Business. A Major Home Based Business does not include General Retail Sales.

[14] Parents dropping off and picking up children from the dayhome and customers picking up orders from the proposed business will increase parking issues in the small cul-de-sac. It is his opinion that parking will not be monitored by the City.

[15] Mr. Rokosh provided the following information in response to questions by the Board:

- a. He confirmed that some of the houses in the cul-de-sac have front driveways.
- b. The rear lane is in poor condition which discourages people from using the rear lane.

- c. Mr. Rokosh parks in the garage at the rear of his property. His parking has not been impacted by the existing business but it has impacted his friends and family that visit. He confirmed that the issues have not always been from the dayhome.
- d. The dayhome has been in operation for approximately three months.
- e. He could not provide a property assessment showing that the property values will decrease with the operation of a Major Home Based Business.
- f. Regarding the written submission from the Respondent, Mr. Rokosh indicated that some of the questions and concerns have been addressed but not all of them. He is still concerned that the proposed Major Home Based Business is a retail business.
- g. He is concerned that the approval of this Major Home Based Business will set a precedent in the neighbourhood.

*ii) Position of affected property owners in support of the Appellant*

Mr. G. Nadeau

[16] He agrees with the concerns of the Appellant.

[17] It is his opinion that the Major Home Based Business should be operating from a commercial site.

[18] Mr. Nadeau provided the following information in response to questions by the Board:

- a. He confirmed that the imposed conditions will address some of his concerns.

Mr. W. Mueller

[19] He agrees with the concerns of the Appellant and his neighbours.

[20] It is his opinion that the Major Home Based Business should be operating from a commercial site.

[21] Mr. Mueller provided the following information in response to questions by the Board:

- a. The business will increase pedestrian and vehicular traffic in the cul-de-sac.
- b. He is not concerned with the dayhome operating from the subject site.

*iii) Position of the Development Officer, Mr. J. Folkman*

[22] The Development Authority did not appear at the hearing and the Board relied on Mr. Folkman's written submission.

*iv) Position of the Respondent, Mr. A. Sajedi-Badashian*

[23] A City official from Development & Zoning Services suggested to him to state on the application form that there would be two customer visits per day. He indicated that at times the number of client visits fluctuates.

[24] The proposed development will not have catering, major food preparation, serving of meals, and no cooking. There will be no deliveries to the site, no employees, or industrial appliances associated with the business.

[25] He and his wife have worked with a dayhome agency for the last three years with no known complaints.

[26] He outlined the menu of the items that will be prepared at the subject site.

[27] All food items are in sealed containers for proper storage and there will be no outdoor storage.

[28] There is a group of clientele that access the menu items and he provides menu items for sale in retail stores.

[29] Alberta Health has regular visits to the business to ensure it is operating with no issues.

[30] He intends to dissolve the dayhome business if the proposed development is approved and is successful.

[31] Client and customer visits with the dayhome and the proposed development will not conflict with each other.

[32] The proposed development will have fewer visits than their dayhome.

[33] There is room to park three vehicles in front of his property.

[34] There will not be a sign on the property advertising the business.

[35] He confirmed that he purchased the subject property in January 2019.

[36] Orders are prepared prior to individuals picking up their orders.

[37] He believes that there are other Major Home Based Businesses in the area that residents are not aware of.

[38] Mr. Sajedi-Badashian provided the following information in response to questions by the Board:

- a. He confirmed that there are three on-street parking spaces in front of his house. There is room for two vehicles to park on-site off the rear lane.
- b. He understood that the street parking was considered on-site parking. He and his wife have one car so there is room for a customer to park at the rear of the property.
- c. He confirmed that there will be no deliveries associated with the business.
- d. He confirmed that there will be no overlapping of customers with a maximum of two customer visits per day.
- e. Customers will preorder several items prior to picking up their purchase or they can make arrangements to pick up the order at the farmers market.
- f. There are two rooms in the basement that are used for the dayhome. The area for the food preparation business is separate from the dayhome area.
- g. He is agreeable to conditions to prevent the business hours of operation from overlapping with the hours of the dayhome. His wife does not work for the food preparation business while the dayhome is operating.
- h. The dayhome was in operation at a different location prior to them purchasing the subject site in January.
- i. He does not intend to have employees. If the food preparation business does well he will look for an alternate location.
- j. He could not confirm the number of food packages prepared each day as it depends on the customer orders.
- k. He is agreeable to the business operating for a reduced number of years, that there shall be no signage, and that there will be no overlapping of customers if the proposed development is approved.

v) *Position of Mr. B. Werthmann, an affected property owner in support of the Respondent*

[39] He does not have any concerns if the conditions of the Major Home Based Business are followed.

*vi) Rebuttal of the Appellant, Mr. S. Roksoh*

- [40] He feels the Board has heard all the evidence regarding both of the businesses running from the subject site.
- [41] He reiterated that the information provided by the Respondent does not address his concerns.

**Decision**

- [42] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** subject to an amendment of the **CONDITIONS**.

The Board imposes the following **CONDITIONS**:

1. This approval is for a **two (2) year period** from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on **July 11, 2021**.
2. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building.
3. There shall be no exterior display or advertisement.
4. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located.
5. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
6. If there are visits associated with the business the number **shall not exceed two per day for any reason**.
7. Clients visit must be by-appointment only and appointments **shall not overlap** with respect to this business or the dayhome currently operating at this location.
8. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business.
9. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
10. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood.

11. Interior alterations for the commercial kitchen cannot be used as a Secondary Suite.
12. All commercial, industrial and overweight vehicles shall be parked at an approved storage facility. The Development Permit may be revoked if any commercial, industrial and overweight vehicles are parked or stored at the residential site.
13. All parking for the Dwelling and Home Based Business must be accommodated on site.
14. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes.

NOTE:

1. This Development Permit is not a Business License.

### **Reasons for Decision**

- [43] A Major Home Based Business is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [44] The Board's test with respect to granting or denying appeals when Discretionary Uses are being considered is to make a determination that the Uses applied for are reasonably compatible with the neighbourhood.
- [45] The Board finds that the proposed Major Home Based Business is reasonably compatible with neighbourhood with the amended conditions to accommodate the two businesses that will exist once the proposed development is approved. The Board notes that contained in the definition for a Major Home Based Business is the authority to operate one or more businesses at the same site.
- [46] The Board was presented with opinions from the Appellant and other adjacent property owners who were opposed to the proposed development that the proposed development is a retail sales business.
- [47] The Board has determined that the proposed development follows the definition of a Major Home Based Business because of the conditions imposed that restrict the number of site visits; prohibit overlapping client visits with the dayhome or the proposed food preparation business; and there shall be no signage.
- [48] The Board finds that the Major Home Based Business is secondary to a residential Use and does not change the appearance and compatibility with the neighbourhood.



- [49] The Board amends the imposed condition by the Development Officer decreasing the approved permit from five (5) years to two (2) years.
- [50] The Board in reaching the test for compatibility has determined that the two businesses need to be monitored. After two years, the Respondent will have to apply for a new Development Permit and any neighbourhood concerns could be identified at that time.
- [51] The Appellant indicated he had concerns with the process, validity, and lack of information for the proposed development. The Board notes that community consultation is not required for a Major Home Based Business at this location.
- [52] Based on the above, the Board finds that the proposed development with the conditions attached, is reasonably compatible with the neighbourhood.

Mr. V. Laberge, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. C. Buyze; Ms. E. Solez; Mr. L. Pratt

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. J. Folkman / Mr. A. Wen

**Important Information for the Applicant/Appellant**

1. This is not a Business Licence. A Business Licence must be obtained separately from Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*